

## **SETTLEMENT AGREEMENT**

WHEREAS, on November 12, 1998, Plaintiffs American Canoe Association, Inc. ("ACA") and the Sierra Club filed a complaint (C.A. Number 98-1195-CV-W) in this action against the United States Environmental Protection Agency, Carol M. Browner, Administrator, and Dennis Grams, Regional Administrator, EPA Region VII, (collectively "EPA") pursuant to Section 505(a)(2) of the Federal Water Pollution Control Act, as amended (hereinafter referred to as the "Clean Water Act" or "CWA"), 33 U.S.C. § 1365(a)(2), and under the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706 (hereinafter the "APA"). On December 15, 1998, the Missouri Soybean Association also filed a complaint (C.A. Number 98-482-CV-W), against EPA asserting similar claims.

WHEREAS, on January 25, 1999, the aforementioned complaints were consolidated. For the purpose of this Settlement Agreement, the American Canoe Association, Inc. and Sierra Club will be referred to jointly as "Plaintiffs."

WHEREAS, the parties have entered into a Consent Decree that sets forth certain EPA commitments regarding the Clean Water Act Section 303(d) Total Maximum Daily Load ("TMDL") program in the State of Missouri.

WHEREAS, the parties intend for this Settlement Agreement to set forth terms for certain matters related to Section 303(d) Lists, TMDLs and the continuing planning process ("CPP") in Missouri that are not addressed in the Consent Decree.

WHEREAS, EPA has issued a letter setting forth certain commitments with respect to review of some National Pollutant Discharge Elimination System ("NPDES") permits in

Missouri, which is attached hereto as Attachment A for informational purposes only, the terms of which are not incorporated into this Settlement Agreement.

WHEREAS, Plaintiffs and EPA have agreed to a settlement of this action without any admission of fact or law, which they consider to be just, fair and equitable resolution of the claims raised in this action. The parties agree that it is in the interest of the public, the parties and judicial economy to resolve the issues in this action.

NOW, THEREFORE, the parties agree to this settlement in the manner, terms and conditions as follows:

#### GENERAL TERMS

1. The parties to the Settlement Agreement are Plaintiffs and the EPA. The parties understand that the defendants named in the complaints were sued in their official capacities, and any obligations or duties arising under this Settlement Agreement are to be performed by EPA. This settlement applies to, is binding upon, and inures to the benefit of the parties, their officers, employees, members, successors, and assigns.

2. For the purposes of this Settlement Agreement, the following terms shall have the meaning provided below. All references in this Settlement Agreement to sections of the United States Code ("U.S.C.") or the Code of Federal Regulations ("C.F.R.") are to those sections in effect as of the date of entry of this Settlement Agreement or to any amendments to those sections when those amendments become effective.

- a. “EPA” means Carol M. Browner, the Administrator of EPA, or the Administrator’s duly authorized representative; Dennis Grams, the Regional Administrator of the United States Environmental Protection Agency, Region VII;
- b. The “United States” means the United States of America, including its officers, agencies, departments and instrumentalities;
- c. “Total Maximum Daily Load” (“TMDL”) has the meaning provided at 40 C.F.R. §130.2(i);
- d. “Missouri” means the 24<sup>th</sup> State of the Union, admitted as a sovereign State of the United States, forming a Constitution and a state government, including its officers, agencies, departments and instrumentalities.

#### THE CONTINUING PLANNING PROCESS

- 3. Not later than ninety (90) days from the Effective Date:
  - a. EPA will provide Plaintiffs with a copy of the State’s most recent continuing planning process (“CPP”); and
  - b. EPA will publish a notice in the Federal Register informing the public that: the CPP is available for review; by nine (9) months from the Effective Date EPA will prepare and make available to interested parties upon request for their review and comment EPA’s preliminary written summary of its review of the CPP; and interested persons may request a copy of the CPP and EPA’s preliminary summary when available.

4. Not later than nine (9) months from the Effective Date, EPA will: (a) review the CPP for consistency with CWA Section 303(e), 33 U.S.C. § 1313 (e), and EPA's implementing regulations at 40 C.F.R. § 130.5; (b) prepare a preliminary written summary of its review, including any recommendations for improvement of the CPP's public participation, water quality management or NPDES components; (c) provide the preliminary written summary to the Plaintiffs and the State for comment; and (d) make the preliminary written summary available for comment to other parties upon written request. EPA will consider any comments on the preliminary written summary submitted not later than sixty (60) days after the preliminary written summary is provided to the Plaintiffs and the State for comment.

5. Not later than fifteen (15) months from the Effective Date, EPA will review the State's CPP for consistency with CWA Section 303(e), 33 U.S.C. § 1313 (e), and EPA's implementing regulations at 40 C.F.R. § 130.5, and provide Missouri, Plaintiffs and any other person upon request with a written summary of EPA's review of Missouri's CPP. EPA's final written comments will include any recommendations for revisions to the CPP to ensure it is in accordance with the CWA and implementing regulations.

6. EPA will keep a current copy of the State's CPP at EPA, Region VII, for public review during the pendency of this Settlement Agreement.

#### MISSOURI MONITORING PROGRAM

7. Within thirty-six (36) months after the effective date of this Settlement Agreement, EPA agrees to conduct a study of Missouri's monitoring program which is designed

to assess the quality of surface waters in the State of Missouri. Within eighteen (18) months after the effective date of this Settlement Agreement, EPA agrees to prepare an interim report on the progress of the study, which shall include results and conclusions obtained to date concerning Missouri's monitoring program, and make such interim report available to Missouri and the Plaintiffs. In conducting this study of Missouri's monitoring program, EPA will pay particular attention to that portion of the monitoring program which results in identifying impaired waterbodies for the Section 303(d) List, including (a) the statistical methods used by Missouri to determine whether any water meets applicable water quality standards; and (b) the use of volunteer monitoring data. Within six (6) months after completion of the study, EPA will make a written summary of its findings, including recommendations, available to Missouri, Plaintiffs, and the public.

#### MONITORING OF ATTACHMENT B WATER SEGMENTS

8. EPA agrees to coordinate with the Missouri Department of Natural Resources ("MDNR") regarding the status of MDNR's monitoring of the waterbodies identified in Attachment B. As provided in the Memorandum of Understanding between EPA and MDNR (Aug. 14, 2000), EPA will review monitoring data generated by Missouri for these waterbodies and, as appropriate, will provide written comments regarding the data to Missouri. EPA will provide a copy of any comments to Plaintiffs.

#### WATER QUALITY STANDARDS

9. Plaintiffs expect to petition EPA to undertake actions to ensure there are adequate and consistent water quality standards for those portions of (a) the Mississippi River (1) adjacent to Missouri waters in Illinois, Kentucky and Tennessee, (2) upstream of Missouri waters (in Illinois and Iowa) to Burlington, Iowa, and (3) downstream of Missouri waters (in Tennessee and Arkansas) to Memphis, Tennessee, and (b) the Missouri River (1) adjacent to Missouri waters in Kansas and Nebraska, and (2) upstream of Missouri waters (in Nebraska and Iowa) to Omaha, Nebraska. Plaintiffs expect the petition to address: chlordane; atrazine; polychlorinated biphenyls; e coli; enterococci; conventionals (dissolved oxygen, ammonia); nutrients; sediments; and an index of biological integrity for the aquatic community. Plaintiffs also expect to petition EPA to ensure there is a uniform, statistically based method for determining whether any water meets applicable water quality standards. If Plaintiffs submit such a petition after 180 days from the Effective Date of this Settlement Agreement, but not later than two years from the Effective Date of the Settlement Agreement, and the petition requests no broader action than that described in this paragraph, EPA will grant or deny (or grant in part and deny in part) Plaintiffs' petition within one year of receipt of the petition.

#### REPORTING AND MEETING

10. In order to assist Plaintiffs in assessing compliance with this Settlement Agreement, EPA will place copies of approved TMDLs and supporting decision documents on a Web site or Internet location accessible to Plaintiffs and the public within thirty (30) days of EPA approval.

11. EPA will issue yearly progress reports to the Plaintiffs beginning twelve (12) months after the effective date of the Settlement Agreement.

12. EPA and the Plaintiffs will meet yearly beginning nine (9) months after the effective date of the Settlement Agreement to discuss any water(s) and pollutant(s), including any New Water or EPA New Water as defined in the Consent Decree that, pursuant to paragraph 5.B(4)(b) of the Consent Decree, are determined not to need TMDLs or are removed from the Missouri Section 303(d) List or a future list.

#### EFFECTIVE DATE

13. This Settlement Agreement shall become effective upon the entry of the Consent Decree by the Court. If for any reason the District Court does not enter the Consent Decree, the obligations set forth in this Settlement Agreement are null and void.

#### RELEASE BY PLAINTIFFS AND RESERVATION OF RIGHTS

14. Plaintiffs hereby release, discharge, and covenant not to assert any and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity which they may have had, or may now or hereafter have, against the United States based on matters which were asserted or could have been asserted by Plaintiffs in this action, subject to the express reservation of rights in Paragraph 15 herein and in Paragraphs 19 and 20 of the Consent Decree.

15. Plaintiffs reserve their rights to challenge in a separate lawsuit the merits of any final action taken by EPA pursuant to this Settlement Agreement, including but not limited to, the merits of EPA's final action on the next or subsequent Section 303(d) Lists or TMDLs. EPA reserves all its defenses to such suits.

#### AGENCY DISCRETION

16. Except as expressly provided herein, nothing in this Settlement Agreement shall be construed to limit or modify the discretion accorded to EPA by law. Nothing in this Settlement Agreement shall be construed to limit or modify EPA's discretion to alter, amend, or review from time to time any actions EPA may perform pursuant to this Settlement Agreement, or to amend or promulgate regulations consistent with the CWA.

#### COSTS

17. EPA agrees that Plaintiffs are entitled to reasonable attorneys' fees and costs accrued as of the effective date of this Settlement Agreement. The parties will attempt to reach agreement as to the appropriate amount of the recovery. If they are unable to do so, Plaintiffs may file an application with the Court for the recovery of reasonable attorneys' fees within ninety (90) days of the effective date of this Settlement Agreement, and EPA shall respond to it within sixty (60) days. These deadlines may be changed as mutually agreed by the parties.

#### NOTICE



18. Any notice required or made with respect to this Settlement Agreement shall be in writing and shall be effective upon receipt. For any matter relating to this Settlement Agreement, the contact persons are:

For the Plaintiffs:

George Van Cleve  
Van Cleve & Associates  
1155 Connecticut Ave., NW  
Suite 300  
Washington, DC 20036

David Bookbinder  
American Canoe Association  
7432 Alban Station Blvd.  
Suite B-232  
Springfield, VA 22150

John M. Simpson, Esq.  
4937 Wyoming Street  
Kansas City, Missouri 64112

For the United States:

Associate General Counsel, Water Law Office  
Office of General Counsel, 2355 A  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave. N.W.  
Washington, D.C. 20460

Martha R. Steincamp  
Office of Regional Counsel  
U. S. Environmental Protection Agency, Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

and

Chief

Environmental Defense Section  
Environment & Natural Resources Division  
United States Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986

Upon written notice to the other parties, any party may designate a successor contact person for any matter relating to this Settlement Agreement.

#### REPRESENTATIVE AUTHORITY

19. Each undersigned representative of the parties to this Settlement Agreement certifies that he or she is fully authorized by the party to enter into and execute the terms and conditions of this Settlement Agreement. By signature below, all parties consent to entry of this Settlement Agreement.

#### MUTUAL DRAFTING

20. It is hereby expressly understood and agreed that this Settlement Agreement was jointly drafted by the parties. Accordingly, the parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Settlement Agreement.

#### COUNTERPARTS

21. This Settlement Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party has signed all other counterparts.

#### EFFECT OF SETTLEMENT AGREEMENT

22. The Settlement Agreement shall not constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of any party.

#### COMPLIANCE WITH OTHER LAWS

23. No provision of this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or take actions in contravention of the APA, 5 U.S.C. §§ 551-559, 701-706, the CWA, or any other law or regulation, either substantive or procedural.

#### APPLICABLE LAW

24. This Settlement Agreement shall be governed and construed under the laws of the United States.

#### THIRD-PARTY BENEFICIARIES

25. Nothing in this Settlement Agreement shall be construed to make any other person or entity not executing this Settlement Agreement a third-party beneficiary to this Settlement Agreement.

#### DISPUTE RESOLUTION AND REMEDY FOR NON-COMPLIANCE

26. In the event of a disagreement concerning any aspect of this Settlement Agreement, the dissatisfied party shall provide the other party with written notice of the dispute and a request for negotiations. The parties shall meet and confer in order to attempt to resolve the dispute within 30 days of the written notice, or such time thereafter as is mutually agreed. If the parties are unable to resolve the dispute within 60 days of such meeting, then Plaintiffs' sole remedy is to reactivate the litigation in C.A. Number 98-1195-CV-W or Consolidated Case 98-482-CV-W, as appropriate, to seek an order pursuant to the Clean Water Act or the APA to obtain the same action identified in this Settlement Agreement. EPA does not waive or limit any defense relating to such litigation. The parties agree that contempt of court is not an available remedy under this Settlement Agreement.

#### FORCE MAJEURE

27. The parties recognize that the performance of this Settlement Agreement is subject to fiscal and procurement laws and regulations of the United States, which include but are not limited to the Anti-Deficiency Act, 31 U.S.C. §§ 1341, et. seq. The possibility exists that circumstances outside the reasonable control of EPA could delay compliance with the timetables

contained in this Settlement Agreement. Such situations include, but are not limited to, a government shutdown such as occurred in 1995 and 1996 or catastrophic environmental events requiring immediate and/or time-consuming response by EPA. Should a delay occur due to such circumstances, any resulting failure to meet the timetables set forth herein shall not constitute a failure to comply with the terms of this Settlement Agreement, and any deadlines occurring within one hundred twenty (120) days of the termination of the delay shall be extended one day for each day of the delay. EPA will provide Plaintiffs with notice as soon as is reasonably possible in the event that EPA invokes this term of the Settlement Agreement and will provide Plaintiffs with an explanation of EPA's basis for invoking this term. Plaintiffs may challenge the invocation of this term of the Settlement Agreement under the dispute resolution terms of paragraph 26 of this Settlement Agreement, Dispute Resolution and Remedy for Non-Compliance, and EPA shall bear the burden of justifying its invocation of this term.

#### MODIFICATION

28. This Agreement may be modified or amended only with the written consent of all parties.

#### TERMINATION

29. This Settlement Agreement shall terminate on the same date as the Consent Decree in Civil Action No. 98-1195-CV-W and Consolidated Case 98-482-CV-W.

The parties consent to the form and substance of the foregoing Settlement Agreement

For the Defendants, the United States of America:

LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, DC 20530

Dated

*August 18, 2000*

By:

*Eileen McDonough*

EILEEN MCDONOUGH  
Environment and Natural Resources Division  
Environmental Defense Section  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986  
(202) 514-3126


Of Counsel for the Defendants  
and the United States of America:

Karyn Wendelowski  
Office of General Counsel (2355A)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave. N.W.  
Washington, DC 20460

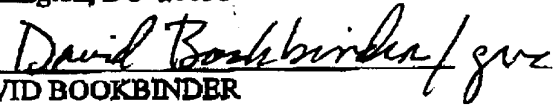
Martha R. Steincamp  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

**FOR PLAINTIFFS:**

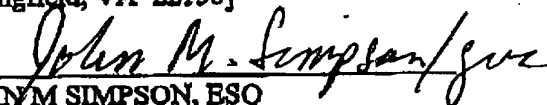
Dated August 17, 2000

By:   
GEORGE VAN CLEVE  
Van Cleve & Associates  
1155 Connecticut Ave., NW  
Suite 300  
Washington, DC 20036

Dated August 17, 2000

By:   
DAVID BOOKBINDER  
American Canoe Association  
7432 Alban Station Blvd.  
Suite B-232  
Springfield, VA 22150]

Dated August 17, 2000

By:   
JOHN M. SIMPSON, ESQ  
4937 Wyoming Street  
Kansas City, Missouri 64112



ATTACHMENT A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

George VanCleve  
Luis M. Acosta  
VanCleve and Associates  
1155 Connecticut Avenue, NW  
Washington, DC 20036

David Bookbinder, Esq.  
American Canoe Association  
7432 Alban Station Boulevard  
Suite B, Room 232  
Springfield, VA 22150

Re: American Canoe Ass'n. v EPA

Dear Sirs:

We are pleased that we have reached agreement to settle this lawsuit. This letter addresses the Environmental Protection Agency's (EPA) commitment to review some permits in the State of Missouri.

EPA agrees to notify the State by letter that we will review a sample of ten (10) draft National Pollutant Discharge Elimination System (NPDES) permits per year, if available, proposed for the State of Missouri for discharges to waters for which Total Maximum Daily Loads (TMDLs) have been approved or established by EPA. In our review of the draft permits, per 40 CFR § 122.44(d)(1), EPA will provide written comments to the State within thirty (30) days of receipt of proposed permits as to whether the effluent limitations are "consistent with the assumptions and requirements of any available wasteload allocation for the discharge established or approved by EPA in a TMDL.

If fewer than ten (10) draft NPDES permits for discharges to waters for which TMDLs have been approved or established by EPA are available in any given year, EPA will review the necessary additional permits to total ten (10) per year of draft permits for discharges into waters on the State's Section 303(d) list for which TMDLs have not yet been completed. In our review of the draft permits, EPA will provide written comments to the State within thirty (30) days of receipt of proposed permits as to whether the effluent limitations are as stringent as necessary to meet the applicable water quality standards for parameters included in the 303(d) listing.

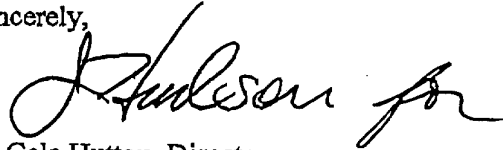
RECYCLE PLEASE CONTINUE RECYCLING PAPER



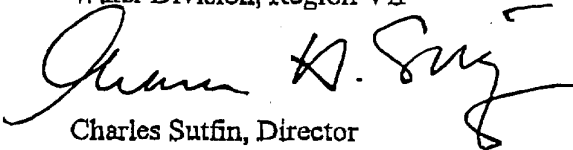
EPA will provide a copy of these written comments to Plaintiffs and any other interested persons upon request. These commitments will end upon termination of the Consent Decree.

We look forward to working with you to develop TMDLs and continue our other efforts to address water quality issues in the State of Missouri. If you have any questions concerning this letter, please call Gale Hutton at (913)551-7307 or John Dunn at (913)551-7594.

Sincerely,



U. Gale Hutton, Director  
Water Division, Region VII



Charles Sutfin, Director  
Permits Division  
Office of Water, US EPA

cc: John Young

## ATTACHMENT B

| <u>WATER</u>                  | <u>COUNTY</u>  | <u>LENGTH</u>            | <u>POLLUTANT</u>              |
|-------------------------------|----------------|--------------------------|-------------------------------|
| Bear Creek                    | Adair          | 7 mls to Rt. KK          | FC, SED, Unk(WWTF)            |
| Hickory Creek                 | Daviess        | 5.5 mls to mouth         | AW, SED                       |
| Hickory Creek                 | Grundy         | 7.5 mls to mouth         | AW, SED                       |
| Raccoon Creek                 | Grundy         | 5 mls to mouth           | AW, SED                       |
| Indian Creek                  | Iron           | 4 mls                    | MTL                           |
| Little Blue River             | Jackson        | 33 mls to mouth          | Unk(PS/NPS)                   |
| E. Honey Creek                | Mercer         | 8 mls to RT. JJ          | AW, SED                       |
| W. Honey Creek                | Mercer         | 11 mls to Rt. JJ         | AW, SED                       |
| W. Medicine Creek             | Mercer         | 35 mls to mouth          | ATZ, AW, SED                  |
| Muddy Creek                   | Mercer         | 18 mls to Grundy Co.     | AW, FC, SED                   |
| Hess-Heaths Creek             | Pettis-Cooper  | 22 mls to mouth          | AW, SED                       |
| Long Branch                   | Pettis-Johnson | 6 mls to mouth           | Unk                           |
| Sewer Branch<br>(Pearl River) | Pettis         | 4 mls to mouth           | FC, Unk(WWTF)                 |
| Little Locust Creek           | Putnam         | 6 mls to county line     | AW, SED                       |
| W. Locust Creek               | Putnam         | 8 mls to mouth           | AW, SED                       |
| Sandy Creek                   | Putnam         | 6 mls to mouth           | Unk(AML), SED, AW             |
| Shoal Creek                   | Putnam         | 20 mls to mouth          | Unk(AML), ATZ, AW,<br>FC, SED |
| Willow Branch                 | Putnam         | 2.5 mls to mouth         | AW, SED                       |
| E. Fork Long Branch           | Sullivan-Linn  | 7 mls to 61N 20W<br>S35  | AW, SED                       |
| Bull Creek                    | Taney          | 6 mls                    | Unk(SGE), SED                 |
| Beaver Creek                  | Taney          | 1 mile                   | Unk(SGE), SED                 |
| Roark Creek                   | Taney          | 3.5 mls to mouth         | Unk(PS/NPS)                   |
| Swan Creek                    | Taney          | 3 mls                    | Unk(SGE), SED                 |
| McCarty Creek                 | Vernon-Barton  | 13 mls to 35N 29W<br>S28 | AW, SED                       |
| Thompson River                |                | Entire MO length         | ATZ, AW, SED                  |
| E. Fork Locust Creek          | Sullivan-Linn  |                          | Unk(WWTFs)                    |

### Codes - Pollutants:

ATZ - Atrazine  
 AW - Animal wastes  
 FC - Fecal coliform  
 MTL - Metals  
 SED - Sediment  
 Unk - Unknown pollutant

### Codes - Sources

AML - Abandoned mine land  
 PS/NPS - Multiple sources  
 SGE - Sand/gravel extraction  
 WWTF - Wastewater treatment